

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Amherst Cinema, LLC; c/o Attorney Peter MacConnell

Date Application filed with the Town Clerk: April 7, 2005

Nature of request: A Special Permit under Section 3.353 of the Zoning Bylaw to construct and operate three movie and/or live performance theaters in general business and limited business zones, and to approve the applicant's site plan for retail and office use under Sections 3.350 and 3.358 of the Zoning Bylaw.

Location: 28-32 Amity Street (Map 14A, Parcels 254 & 217, B-G & B-L Zoning Districts)

Legal notice: Published on April 27th and May 4th, 2005 in the Daily Hampshire Gazette and sent to abutters on April 27, 2005.

Board members: Zina Tillona, Tom Simpson, Barbara Ford

Submissions: The applicant originally submitted:

- A Management Plan for the building, which will contain professional offices, retail and theaters, dated May 5, 2005
- A site development plan by W.A.Canon, landscape architect, dated 4/4/05
- Development plans by Kuhn Riddle Architects, dated 3/24/05

For the continued May 18th hearing, the petitioners submitted:

- A revised Management Plan for the building, which will contain professional offices, retail and theaters, dated May 18, 2005
- A Management Plan for the theaters, by Amherst Center for Stage & Screen, dated May 18, 2005
- A revised site development plan by W.A.Canon, landscape architect, dated 5/16/05
- A site lighting plan by Kuhn Riddle Architects, dated 5/13/05, and specifications for three different types of lighting proposed for the building
- A letter from the applicant's attorney Peter MacConnell requesting a waiver of the parking requirements of Bylaw Section 7.9 and the traffic impact report under Section 11.222, dated May 12, 2005
- Reasons for granting the special permit according to Section 10.38 of the Bylaw
- A license to use the 15 parking spaces during specified hours at the PeoplesBank, South Prospect Street, dated May 12, 2005
- A "Reciprocal Grant of Easements", dated April 29, 2004 between Fleet National Bank (now Bank of America) and the Amherst Center for Stage and Screen (ACSS) for:
 1. Confirmation of a 12-foot right-of-way for the bank on the cinema property, along the easterly side
 2. A pedestrian right-of-way across the cinema property to benefit the bank and other

bank property

3. A 55 x 97.55 foot easement parcel from the bank to the cinema for the purpose of constructing and maintaining an extension of the cinema building
4. A right of the ACSS to cross the bank parking lot off S. Prospect Street for deliveries and to use the parking lot for weekend and nighttime parking.

Submissions from Town staff or committees were:

- The minutes from the Amherst Historical Commission meeting of March 14, 2005 – in support of the proposal
- Remarks from Jason Skeels, Town Engineer, concerning issues of drainage, elevations and a retaining wall
- A memorandum from zoning staff outlining zoning, dimensional and parking requirements for the proposal, dated May 5, 2005
- A memorandum from the Planning Board supporting the application as a “vital downtown redevelopment project” and unanimous support for the applicant’s request for waivers of a Traffic Impact Statement and the parking requirements for the third theater located in the Limited Business Zoning District, dated May 6, 2005
- A memorandum from Michael Zlogar, Assistant Fire Chief, outlining access concerns, dated May 11, 2005
- A second memorandum from Michael Zlogar, dated May 17, 2005 outlining additional information and concluding that sufficient access is available on both the eastern and westerly sides of the building

Electronic mail received included:

- A letter from Jonathan Tucker, Interim Planning Director, recommending that the ACSS submit an outreach/marketing plan, dated 5/13/05
- A letter from Hwei-ling Greeney encouraging the applicant and the Town to study and take steps to mitigate the impact of the cinema project on traffic and parking, dated 5/16/05
- A letter from John Kuhn, architect for the cinema project, responding to Ms. Greeney’s letter, dated 5/17/05
- A letter from Nick Seamon, businessman and member of the Town Commercial Relations Committee, in response to Ms. Greeney’s letter, dated 5/19/05

Site Visit: May 10, 2005

John Kuhn, architect for the project, and Barry Roberts, owner and petitioner, gave a tour of the current building and proposed addition. The Board observed the following:

- The 40-foot easement along the westerly side of the property voted by Town Meeting for the cinema project in 2002
- The access from Amity Street along easterly property line
- The proposed covered arcade along the eastern part of the building
- The interior of the building, with the entrance to the old theater built at a higher level and on top of the earlier business – Paige’s livery stable. By restoring the original level of the interior, a second floor can be inserted without changing the roof line.
- The 4-foot grade difference between the east and west sides of the property behind the current building and where the proposed new theaters will be located.
- The location of the proposed east/west covered ramp dividing the proposed shops from the theaters
- The location of the largest theater on the Bank of America property
- The slight grade difference and 4 “ curbing between the Bank of America parking lot and

the Town parking lot along Amity Street to the north, which may be a problem later

Public Hearing: May 12, 2005

Petitioner's Presentation - Speaking to the petition request were Barry Roberts, property owner and applicant (Amherst Cinema LLC), Peter MacConnell, attorney, John Kuhn, architect, and Carol Johnson, president of the non-profit Amherst Center for Stage and Screen, Inc. (ACSS).

Barry Roberts stated that he purchased the cinema property about five months ago from ACSS. His goal is to bring back the cinema to Amherst and save the existing building as much as possible. He wants to put the building back on the tax rolls as well as bring more cultural activities to the downtown, he said

In order to achieve both goals, there needs to be a mix of for-profit and non-profit activities, Mr. Roberts stated. He is proposing to create this mix, with shops in the front part of the building, and three theaters in the rear of the building. The site work – building the shops, the office space and three theater shells – is the petitioner's responsibility. The non-profit ACSS will lease the theaters from him. It will be the responsibility of ACSS to furnish the theaters - provide the seats, sound system, projection room, etc.

Mr. Roberts stated that ACSS acquired an easement from the former Fleet Bank, now Bank of America, to build the third theater on their property. Because the agreement with the bank was with ACSS when they owned the cinema building, the agreement needs to be updated to the current owner, Mr. Roberts. His attorney, Peter MacConnell is in the process of revising that agreement.

Architect John Kuhn gave a slide show of the architectural plans for the building with the following information:

- An aerial photo of the existing building revealed the three sections of the building that currently exist
- The center main section with the pitched roof was a livery stable in the 1800's
- The front and back sections were added in the 1920's when the building became a theater. These two sections are flat roofed,
- The old theater was $\frac{3}{4}$ of the building, with two shops in the front along Amity Street.
- The two shops in the front of the building will be renovated, and six more shops will be created from the old theater section.
- The back wall of the building will be demolished and the building will be extended about 50 feet in order to build two of the new theaters. This extension will almost reach the back property line, leaving enough room for a lighted sidewalk and stairway in the back of the building, next to the Hastings building.
- The new addition will meld into the flat roof line of the current building, and have the same elevation
- The third and largest theater will be built to the west of the building on the 40-foot easement given by the Bank of America.
- The area of the former theater will now contain six retail spaces.
- A covered 8-foot wide walkway, the "arcade", will be created along the eastern side of the cinema building. The arcade will provide access to both the six side shops and the three theaters.

- A raised sitting terrace, approximately 15 x 50 feet in area, will be built east of the arcade and in front of two of the retail spaces closest to the theater.
- The entire building and theaters will meet all disability access standards
- Between the shops in the front section of the cinema building and the theaters at the back will be a covered pedestrian walkway which will cross the cinema property in an east-to-west direction. This walkway will be open for pedestrians 24 hours/day.
- The walkway is designed as a ramp, with three landings and no stairs. There is a 4-foot drop from the third theater on the bank property (western side) to the eastern side of the cinema property. This is one of many accessible features to this proposal.
- The front section of the building already has a second floor. Because the seating area of the old theater was significantly above ground level, removing the old theater floor has resulted in a large two-story area. A new second floor now can be inserted over the former theater section without having to change the roof line. This second floor is proposed for office space.
- The current peaked roof will remain the highest part of the building as before, with the new theater section at a lower elevation.
- A hole was found in the pitched roof that formerly held a cupola, so the petitioner will be restoring a cupola to the top of the roof
- Construction materials will consist of a combination of brick and concrete blocks
- A 12-foot easement for the bank will remain open along the eastern boundary of the property. The easement, plus the 12-foot right-of way owned by the bank will be wide enough for emergency vehicles to access the cinema and surrounding buildings.
- The design of the cornice on the arcade will match that of the existing marquee
- Signage at the front eastern corner of the building will be a directional sign for the shops along the arcade
- Design of the signs for the theaters will be submitted later.

Mr. Kuhn stated that the theaters will straddle two zoning districts – the General Business and Limited Business districts. The cinema property is entirely in the B-G zone. The largest theater, proposed to be built on the bank easement, is in B-L zone. The basic minimum side and rear setbacks are 25 feet in a B-L zone. The proposed theater would have zero (0) feet on the northern and eastern sides of the lot and 16 feet from the southern side. Thus the petitioner requests a modification for these setbacks, which is allowed under a Special Permit in a B-L District.

Carol Johnson, president of the Board for the Amherst Center for Screen and Stage (ACSS) presented information concerning the theaters. She introduced the three other ACSS Board members who were present – Donald Pitkin, an interested neighbor who started the process for saving the theater, Don Sanders from MA International Festival of the Arts, Steve Morgan, who helped renovate and manage the Turners Falls Theater, and David Mazor, one-time manager of the former Amherst Cinema.

Ms. Johnson said that the ACSS is happy with the proposed plans, and they want to make Amherst a “destination of choice” with their choice of programming. ACSS will remain a non-profit organization.

Some details of how ACSS will manage the theaters were given by Ms. Johnson:

- The business plan is being developed from those of other professional cinema/theater groups who have been successful.

- The ACSS is a non-profit organization.
- The ACSS will feature international and world cinema, but will have live performances as well – music, readings, comedy shows.
- Evening cinemas will be the primary focus
- The theaters will have no back-stage area for actors, so fully staged live theater will not be possible.
- ACSS will be having major fundraisers in order to furnish the theaters. They will provide the seats, projection equipment, acoustical and sound systems, concessions, etc for the theaters.
- They will lease the theaters from Barry Roberts at the outset, but will retain the option to buy the theaters for the future.
- They have had inquiries from other non-profit theater groups who want to use the theaters for film-festivals or meetings.
- They have made arrangements with the Bank of America and the Peoples Bank to use the banks' parking lots in the evenings.

Board Comments/Questions for site and building - Zina Tillona, ZBA Chair, asked the Board if they had questions for the petitioners, focusing on the site and building plans first.

ZBA member Tom Simpson asked about the Fire Department report dated 5/11/05. Attorney MacConnell said that there is access on both the east and west sides of the building for fire trucks and ambulances, and this proposal will not be making the current configuration of the buildings any worse. The renovations will include a sprinkler system for the entire building, and other safety improvements – fire walls, emergency exits, handicapped accessibility, etc.

ZBA member Barbara Ford asked about deliveries, especially those with large vehicles. Mr. Kuhn said that deliveries will be made from the east side of the building, where two easements will remain, resulting in a 24-foot wide driveway there. Also, deliveries to the theaters can be made from the Bank of America parking lot to the south-west corner of the cinema building.

Mr. Simpson asked if each retail space will have two means of egress, basement space, and separate sprinklers. Mr. Kuhn said that all code requirements will be met for sprinkler systems and two means of egress per shop. The basement space is small and will contain the electrical system for the building.

Ms. Tillona asked about the heating and air-conditioning. Mr. Kuhn said that both will be self-monitored. Heat will be gas-fired; the HVAC unit will sit on the flat part of the cinema roof.

Building Commissioner Bonnie Weeks commented that a roof heating and air conditioning unit may be noisy to abutters. The Board may wish to require shielding for the unit to lessen the impact.

Ms. Ford asked about drainage from the flat roofs. Barry Roberts said that water will drain east and to the rear of the building where he has put in a new catch basin near the Hastings building. This will be an improvement to the overall area, because water previously drained into the Hastings building and cause damage. The sewer line exists now, and is adequate for the area.

Ms. Ford asked about landscape plans. Mr. Kuhn said that the current lot coverage is 100% with the building and pavement. The addition will replace the pavement, so that the building will use virtually all of the lot. They may have flower boxes for some of the shop windows, and some other

small spaces for green, but there is little space for landscaping overall for downtown urban spaces.

Mr. Simpson asked about the back of the proposed addition not reaching all the way to the property line. The Zoning Bylaw regulations state that rear and side yard setbacks are not required in a B-G district, but if provided, shall be at least 10 feet. Attorney MacConnell replied that, according to the Building Commissioner, if the stairway in the rear goes to the property line and touches the boundary at any point, the setback requirements are met. The proposed stairway reaches the boundary, and thus a setback is not required.

Ms. Ford asked about lighting. The applicants said that a lighting plan will be submitted soon, but that lighting will be all along the sides of the building, the arcade will be lit, and the lighting on the west side of the building facing a residential neighborhood will be downcast.

Board Comments/Questions for the theater operation - ZBA Chair Zina Tillona moved on to the operations of the theater. She informed the ACSS that they need to submit a management plan that will cover all aspects of the theater. A decision on granting the Special Permit cannot be made without it.

Ms. Tillona asked ACSS President Carol Johnson about the hours of operation. Ms. Johnson said that they will mirror those of the Pleasant Street Theater in Northampton, i.e., primarily during the evening hours.

The Board asked for more information regarding the parking agreements with Bank of America and Peoples Bank. Attorney MacConnell provided the following information:

- The easement with Fleet, now Bank of America, was signed a year ago with the ACSS and is in the process of being amended. The easement agreements (parking, building, rights-of way) are free, if the theaters are managed by a not-for-profit group.
- The contract with Peoples Bank is a license agreement, and also is free.
- If the banks change hands still again, the two agreements will remain.
- He will submit copies of these agreements to the Board.

A question was raised concerning the use of Bank of America's parking lot during business hours. Will there be signage in the bank parking lot stating something like "No Parking for Amherst Cinema during the day"? Ms. Johnson said that they will be discussing this with the bank.

Ms. Ford asked about the ACSS buying the theaters. The answer was that when that happens, the theater group will come back to the ZBA for a modification of the Special Permit.

Mr. Simpson asked about noise transmission from the theaters to the outside. Will there be amplified music or sound from non-cinema events? Ms. Johnson said that ACSS has an acoustic consultant working with Kuhn-Riddle architects for the proper soundproofing of the theaters. Barry Roberts stated that there will be specific sound absorption material built into the building. The sound will stay within the theaters, and the interior construction will improve the acoustics within.

Mr. Simpson asked how the theater crowds will be managed before performances. Ms. Johnson said that the lobby for the theaters can hold about 100 people. The arcade and east-west walkway next to the lobby entrance will allow people to wait under cover as well.

The old theater had 601 seats, the applicant said. The three new theaters will have a capacity of 49, 49 and 170 seats (290 seats total) and the shows will be staggered. Even if the shows were not staggered, the seating capacity is less than half that it was previously.

Ms. Ford asked about a concession area. Ms. Johnson replied that, like the Academy and Pleasant St. Theaters in Northampton, it will be simple. They have no intention of dedicating much space or staff to concessions.

Ms. Johnson said that there will be three full-time employees for ACSS – an executive director, an office manager, and a theater manager. These employees will have an office upstairs and will work during the day. Direct operations of the theater will include ticket takers (1-2), concessions (1-2) and a projectionist (1). The maximum number of employees on site at any one time will be no more than seven (7).

Public Input – Six people from the audience spoke in favor of the petition; two also had questions:

1. Jerry Jolly, 3 Wildflower Drive, said that he was representing the 90 business members of “Promoting Downtown Amherst” (PDA). They have given their “enthusiastic support” of this proposal.
2. Hwei-ling Greeney, 76 McClellan Street, said that she supports having a movie theater in downtown Amherst, but wanted to know the capacity of the entire building, not just the theaters. How will the parking issue be addressed, and is there a parking plan?

Attorney MacConnell replied that parking is not required in the municipal parking zone of the B-G district, where most of this project is located. Parking needed for the larger theater has been addressed via the agreements with the two banks discussed earlier.

3. Paul Bobrowski, 55 Hulst Road, and Chair of the Planning Board. He said that the Planning Board discussed this application at their meeting May 4th. The Planning Board voted unanimously to support the application “as a vital downtown redevelopment project.” They also voted to recommend a waiver of a traffic study for the area, since there is no way to ameliorate the problem other than building another parking garage. The traffic and parking are a public responsibility, not the applicant’s. The Planning Board recommends a full waiver on parking for three reasons: 1) The petitioner has made a good faith effort to secure extra parking from the abutting banks, 2) The occupancy of the theaters and shops will be less than that of the old theater, and 3) The parking lot of the Bank of America, where the third theater will be located, is actually used as part of the B-G district, and should not be zoned Limited Business.
4. Joan Bargerich, co-owner of Food for Thought Books, said that she can’t wait to get to the movies again. She will walk to the theaters, and imagines that many others will as well.
5. Bonnie Isman, Director of the Jones Library at 43 Amity Street, supports the project and asked what will be in the retail shops. She had three comments: 1) A coffee shop would be great, but management of the refuse containers may be an issue. 2) To connect the theaters and shops to other parking in town, such as behind the library in the CVS lot, a crosswalk in the middle of the block in front of the library will be needed more than ever, and 3) The library staff wondered about the HVAC system which was put on top of the Amherst Brewing Company near the library, but it is fine. There is no noise.

Ms. Tillona replied that the proper handling of trash/recyclables, including customer receptacles, is part of the Petitioner’s submitted Management Plan. It will be part of the lease

agreement with the shop managers as well. Mr. MacConnell added that the Petitioner has proven himself as a good manager for his other properties in the downtown area.

6. David Mazor, 24 Mountain View Circle, spoke in support of the petition. He owns the Matthews Block, just north of Hastings. He said that the previous theater was larger, but didn't have a negative impact on traffic. He is looking forward to the improvements proposed by the petitioner. At present, the building and lot are in terrible condition and make the surrounding downtown area look blighted as well. The downtown needs this building to be renovated.

Following the public input, the Board discussed whether to close or continue the hearing. Missing information consisted of lighting plans, sign plans, a management plan from ACSS, and copies of the easement/parking agreements with the two banks. More information concerning emergency access for fire trucks was requested as well.

Attorney MacConnell said that the petitioner is asking for waivers for:

- Parking requirements and a traffic study
- Landscape and erosion control requirements
- Dimensional setbacks for the theater in the B-L zoning district

Tom Simpson moved to continue the hearing to 7:30 Wednesday, 5/18/05. Barbara Ford seconded the motion, and the vote was unanimous.

Continued Public Hearing – May 18, 2005

Attorney Peter MacConnell and architect John Kuhn submitted the eight (8) documents listed above under "Submissions for May 18th hearing."

Mr. MacConnell gave the following information:

- The HVAC unit on the rooftop will be screened, providing visual and auditory protection.
- The applicant met with Assistant Fire Chief Mike Zlogar and went through all the plans for the renovation. They also conducted a test run for emergency access, and the ladder fire truck could successfully negotiate access to both the west and east of the building. Pictures of the fire truck's ability to reach all sides of the building were submitted with Mr. Zlogar's second memorandum, dated 5/17/05.

Mr. Kuhn submitted a second site plan, pointing out some changes:

- A small stairway was added to the plaza/patio area on the eastern side of the building near the theaters.
- The largest theater has been enlarged to accommodate 200 seats, 8 more than previously proposed. The front row of seats was too close to the stage and screen, so the petitioner has extended the length of the theater by four (4) feet.
- Previously the proposed theater setback from the southern property line was 18 feet; if is now proposed to be 14 feet. Again, a waiver from the side yard dimensional requirements will be needed for this building in the B-L district.

Mr. Kuhn discussed the lighting plans, and submitted a site plan, pictures and information about the various types. The proposed lights are:

- Incandescent for all exterior fixtures.
- Wall pack lights for over exterior doors, the sides of the building, near the dumpster, near Bank of America, etc. The radius of light is 10-12 feet.

- Step lights, set in the walls of the exterior stairs
- A decorative fixture (large block letters "A" & "C") in the tower to the theater
- Lights over the directional sign on the easterly side of the building, and for signs along the arcade for each of the tenants.

Mr. Kuhn said that the HVAC units will be enclosed, and when they have been chosen, the specifications will be submitted to the Board. Also, he would like to come back later to the Board for approval of the signs when more work has been completed on the building.

Carol Johnson, president of the ACSS Board, discussed the submitted management plan for the theater. She stated that:

- The ACSS will lease the space from the petitioner, and have the right for future purchase.
- ACSS will provide all the theater furnishings
- They will have a full schedule of programming, beginning with evening cinema. Daytime Saturdays will include children's films, readings, and recitals.
- They would be happy to work with Town committees and staff to distribute information about parking options to patrons.
- They cannot give financial incentives for alternative parking arrangements. They are a non-profit group, operating on a shoe string. They must fund raise constantly, use volunteers, and keep expenses as low as possible.
- Number of employees on site during the cinemas will be 6-7 staff. They would like the ability to have up to 15 staff on site in case the programs expand.
- There will be three full-time employees, two of which will not be on site during performances.
- Evenings and weekends will be the most common time for the theaters to be open, but they want the ability to use the theaters during the day for special uses. The recent opening of "Star Wars", for example, started at 12:01 AM and was shown continuously for 24 hours.
- Although not frequently, they would like the ability to host film festivals as well.
- In terms of parking, the three proposed theaters are half the size as the former theater. Folks go with family or friends, so that 299 spaces are not needed. Others will walk, and still others will combine the movies with other trips downtown.
- The Calvin Theater in Northampton has 1500 seats, but no dedicated parking at all.
- ACSS anticipates showing films at all three theaters. The popular films will start at the bigger theater. Times will be staggered. Staff and the lobby can then handle all three theaters operating at once.

Ms. Johnson concluded by saying that the ACSS wants people to have a reason to come to Amherst. They want Amherst to be a destination of choice.

Ms. Tillona said that in her experience, people come to Amherst to do multiple things – errands, a meal, and then the theater. Parking needs should not be doubled with the cinemas in operation.

Mr. Simpson reminded the ACSS that if they want to exercise the right to purchase the theaters, they will need a new Special Permit.

Ms. Ford asked about handicapped exits from the theaters. The petitioner said that they are working on handicapped exits for all three theaters, along with good seating and good screen size. The exit in the front of the three theaters is accessible to all, and does go to the bank parking lot or to North Pleasant Street. The building code will determine whether additional steps are needed.

Chris Riddle, architect with John Kuhn, said that they are working with consultants from Kansas City who designed a set of theaters with similar issues of seating configuration, screen size and handicapped access.

Mr. Kuhn said that the entire building is accessible. There are 11 toilet rooms in the overall building, and all are accessible. There will be railings along the east-west walkway to aid older or disabled folks, and they are currently working on a lease with the bank for handicapped parking spaces.

Commissioner Bonnie Weeks said that she and the petitioner are working on building code issues on the west side of the building. She wants to make certain that at least 10 feet along the west side of the property (the Town parking lot) will stay clear for emergency access.

Five members of the public spoke at the continued hearing:

1. Richard Alcorn, 11 Dickinson Street, said that he is worried about the traffic and parking associated with the Jones Library. Will the theater use conflict with the library use? Will children going to the Jones Library have more difficulty crossing the street?

Attorney MacConnell answered that the bulk of the building, including two of the theaters, is in a municipal parking zone where the Town provides parking, and the applicant is not required to do so. The two banks have given permission for the theaters to use their parking on evenings and Saturday afternoon. The petitioners have done what they can do to provide extra parking.

2. Anne Awad, 188 Pine Street, supports the project, and wants it realized with full access. The Disability Access Committee has concerns, she said, and they should participate in the process.

3. Neal Davidson, South Hadley, member of the Disability Access Committee, said that he would like to share information from this presentation with his committee. The Committee has not had a presentation of the site plans yet. He said that Mr. Kuhn often shares his plans with them. They would like to follow the chronology and to give input.

Mr. Kuhn said that he would be happy to come to the next meeting of the Disability Access Committee. He also said that the building code requires full access for projects such as this; hence, as previously stated, this building will be fully handicapped accessible.

Ms. Tillona said that, by state law (M.G.L. Ch. 40A), notices of ZBA hearings are published in the Gazette for two weeks previous to the hearing. Abutters are notified and the notice of hearing is posted two places in Town Hall. The Select Board, relevant town staff, neighboring towns, interested parties, etc. are notified. Town committees other than the Planning Board are usually not notified. Hence, although the Disability Access Committee was not specifically notified, there was plenty of notice given beforehand.

Zoning staff assistant Carolyn Holstein said that in the future, for large projects in the business districts, the Disability Access Committee will be specifically notified if they wish.

4. Rob Kusner, 49 Van Meter Drive, said that though the seating capacity of the proposed theaters will be half that of the original cinema, this is a different era than the 1920's when the cinema opened. Traffic is much heavier now. He thinks it would be important that the theater folks study where the extra parking will be. He recommended the Newmarket and Big Y areas for parking,

and use of a shuttle bus. His opinion is that whatever the ZBA can do to mitigate the parking and extra traffic as a result of the cinemas would be good.

5. Hwei-ling Greeney, 76 McClellan Street, said that she is looking forward to the cinema, and hopes that she can take her mother to the movie theater here as she did at Oberlin, Ohio. There the ticket prices are \$3.00. As a resident, she supports businesses and understands the difficulties of parking. She feels that the parking concerns should be referred to a Traffic Study Committee.

Ms. Tillona said that the ZBA rules on the use of the building, and does not require a traffic impact study except in unusual circumstances.

Mr. Kusner asked if the ZBA approval depends on Select Board approval of an easement to the west of the building. Town Meeting had authorized the easement, but the Select Board has to "sign off" on it.

Attorney MacConnell replied that yes, there are issues on the western side of the cinema building. Town Meeting had voted a 40-foot easement to the ACSS for the reconstruction of the cinema building. The petitioner's first step is to get the Special Permit application approved. The second step, if needed, would be to go to the Select Board for final authorization of the easement.

Ms. Tillona said that the ZBA looks at whether the building plans are adequate, whether the proposed uses are correct, whether Zoning Bylaw requirements are met and whether the proposal fits into the neighborhood. That is the basis for a Special Permit decision by the Board. If it is later shown that an easement is needed (or something else required in the building code), the plans can be revised, and the application re-submitted to the ZBA for approval.

Attorney MacConnell said that he would like to address Section 10.38 of the Zoning Bylaw, "Findings Required of all Special Permits":

- The proposal is suitably located, right in the center of the business district, surrounded by banks, retail stores and municipal parking
- The proposal is compatible with existing uses in the area
- The proposal would not constitute a nuisance – noise will be kept within the building, lights will not intrude on abutters' property.
- The structure is not offensive, but rather restoring an old building
- The parking needs have been satisfied and the Board can waive the parking requirements for the larger theater in the B-L zone.
- The historical features of the building – the slate roof, the cornices and copper flashing in particular – will be preserved.
- It improves the drainage in the area, and will help to protect adjacent properties from water damage
- It is in harmony with the general intent of the bylaw, and will promote the well being of residents more than any other in recent history.

Ms. Ford moved to close the hearing. Mr. Simpson seconded the motion, and the vote was unanimous.

Public Meeting:

Ms. Tillona asked the Board to list the issues that the Board needed to address. They are:

1. Whether to waive the setback requirements in the B-L district.

2. Whether landscaping can be waived.
3. Whether the suggested parking (B-L District) is sufficient to waive parking requirements.
4. Whether the Required Findings of Section 10.38 are met.

Erosion control was found to be not applicable in this case.

Ms. Ford moved to waive the setback requirements for the third theater in the B-L district, and to waive any landscaping requirements. Ms. Tillona seconded the motion, and the vote to waive the setbacks and landscaping was unanimous.

Although a traffic study is not a standard requirement for a Special Permit with the Zoning Board of Appeals, it can be requested under the ZBA Rules and Regulations if the Board finds one is needed. The Board did not find sufficient need for such a study since the bulk of the project is located in the Municipal Zone where parking is provided by the Town (Section 7.4 of the Bylaw) and traffic is unregulated.

The parking requirements of Section 7.003 for theaters are – one (1) parking space for each four (4) seats in a B-L District, or 50 spaces for the third theater. The Board found that sufficient parking (55 spaces) was obtained via easements and agreements with the two banks in the area. Hence the Board determined that the petitioner had met the intent of the parking requirements of the Bylaw.

Mr. Simpson moved to waive a traffic study and waive parking requirements of the B-L district. Ms. Ford seconded the motion, and the vote was unanimous to waive a traffic study and extra parking.

Findings:

Section 3.353 of the Zoning Bylaw requires a Special Permit for theaters or cinemas in B-G and B-L districts. Sections 3.350 and 3.368 allow for retail stores and professional offices in B-G and B-L districts via Site Plan Review. Because a Special Permit with the Zoning Board of Appeals requires a higher level of scrutiny (i.e., issues of use as well as the site itself decided on by the Board), the entire proposal is combined under a Special Permit to the ZBA.

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required for all Special Permits, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, since the building will become of mix of uses (food shops, offices and theaters for example) compatible with similar uses in both B-G and B-L zoning districts.

10.382 & 10.385 – The proposal would not constitute a nuisance due to flood, noise, lights or visually offensive structures since the building will be restored with upgraded drainage for the surrounding buildings as well. Lighting will be downcast; the cinemas will be designed to keep noise within the building. The building will be visually enhanced.

10.383 & 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians since abutters will have continued access to the back of their buildings, emergency vehicles can reach all sections of the building as well as surrounding buildings, and pedestrians will have two covered walkways for accessing the shops and/or theaters.

10.384 – Adequate and appropriate facilities would be provided for proper operation in that the theaters will be state of the art with proper cinema equipment, seating, acoustics; the building is totally accessible with 11 toilet rooms; and the walkways, lighting and signage will enable patrons to use the theaters and shops more easily than at present.

10.386 – The proposal ensures that it is in conformance with Parking and Sign regulations since the main part of the building is in the municipal parking district and does not need extra parking. Signs will be submitted for approval at a business meeting of the Board. For the third theater, the applicant has obtained easements and licenses for approximately 55 spaces during evenings and weekends when the theaters will be most often used. The applicant has provided as much available parking as the Bylaw requires during those times.

10.388 – The proposal ensures adequate space for off-street loading and unloading of goods and products in that off-street loading/unloading will take place on the east side of the building, where there is adequate access. The Bank of America parking lot on the west side of the building will be available as well, particularly for the theaters.

10.389 – The proposal provides adequate methods of disposal in that the property is serviced by Town water and sewer lines. The owner will provide receptacles for refuse and recyclables for each shop and the theaters, and will have a dumpster at the back of the property. At the request of the Department of Public Works, the applicant is installing one new storm drain and repairing a second.

10.391 – The proposal protects, to the extent feasible, unique and important historic features in that the original 100+ year old building will be respectfully restored, not demolished. The copper piping, the slate roof, the cupola, cornices, etc will be kept. The building materials of the new addition will match that of the original building.

10.392 – The proposal provides adequate landscaping and screening to the extent that it can. The site currently is covered 100% with pavement or building and is non-conforming as to coverage. The proposal does not change this fact, but the applicant said that they would provide plantings in as many areas as possible – window boxes, indoor plants, etc.

10.396 – The proposal provides screening for storage areas, dumpsters, and similar features since the dumpsters will be screened, the rooftop equipment will be screened, and other storage will be done within the building or basement area.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw in that the restoration and new theaters will promote the economic viability of the downtown, it will enhance the creative offerings in Amherst, and it will promote the convenience and general welfare of the inhabitants of Amherst.

Zoning Board Decision:

Mr. Simpson moved to APPROVE the Special Permit request, and Ms. Ford seconded the motion. For all of the reasons stated above, the Board VOTED UNANIMOUSLY to grant a Special Permit under Sections 3.353, 3.350 and 3.358 of the Zoning Bylaw to Amherst Cinema, LLC to construct and operate three movie and/or live performance theaters and to approve the applicant's site plan for retail and office use on the premises at 28-32 Amity Street, (Map 14A/Parcel 254 & 217, B-G & B-L Zones), with conditions.

ZINA TILLONA

TOM SIMPSON

BARBARA FORD

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____, 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Amherst Cinema, LLC under Sections 3.353, 3.350 and 3.358 of the Zoning Bylaw to construct and operate three movie and/or live performance theaters and to approve the applicant's site plan for retail and office use on the premises at 28-32 Amity Street, (Map 14A/Parcel 254 & 217, B-G & B-L Zones), subject to the following conditions:

1. The site shall be developed as shown on the "Site Development Plan" by W.A.Canon, dated 5/16/05 and approved by the Board on May 18, 2005, and on file in the ZBA office.
2. Lighting shall be located as shown on the "Site Lighting Plan" by Kuhn Riddle Architects, dated 5/13/05, and approved by the Board on May 18, 2005 and on file in the ZBA office.
3. All external lighting shall be pointed downward.
4. Final architectural plans shall be reviewed by the Board at a Public Meeting.
5. Prior to the issuance of a certificate of occupancy, the Petitioner shall return to a Public Meeting of the Zoning Board of Appeals with a site and building plan showing:
 - The location of trash/recycling receptacles, landscape plantings or planting beds (if any), exterior seating, railings, and all other site furnishings.
 - The location, dimensions, colors and design of permanent signs for the building and theaters.
 - The general location, dimensions, colors and basic design for blade signs under the canopy for individual shops.
6. The dumpster and rooftop HVAC system shall be screened to minimize visual and auditory impact. Designs for this screening shall be submitted under the provisions of Condition 5 above.
7. The use of the theaters shall be as described in the Theater Management Plan, received and approved by the Board on May 18, 2005, and on file in the ZBA office.
8. The theater operator will, to the extent feasible, provide patrons with regularly updated information regarding public transit, downtown parking areas, and bicycle parking via a website, publications for patrons, information posted in the theater and other means as appropriate.
9. The normal hours of operation for the theaters shall be:
 - Monday through Friday – 1 PM to 1 AM
 - Saturday, Sunday and holidays – 10 AM to 1 AM
10. From time to time, on an irregular basis, the hours of operation for the theaters may be extended for film festivals or similar events.
11. Additional uses for public events in the theaters are permitted, with the hours conforming to Condition #9 above.
12. The theater staff on site at any one time shall not exceed 15 persons.
13. Any change in management or plans for the theaters shall come to the Board for review at a Public Meeting.

14. If the ownership of the theater portion of the building is conveyed to any party other than the Petitioner, such as Amherst Center for Stage and Screen (ACSS), the new owner shall apply to the ZBA to amend this Special Permit in order to change any relevant conditions of this permit.
15. Any change in parking easements/agreements with the abutting private property owners, currently the Bank of America and the People's Bank, shall be brought before the Board for review at a Public Meeting.
16. The use and maintenance of the building as a whole shall be as described on the Building Management Plan approved by the Board on May 18, 2005 and on file in the ZBA office.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE